parties, which is to be gathered from the documents they have signed. (see *Barclays Bank Ltd.* v. *Beck*[1]). Clause 21 of the Charge clearly indicated that there was to be no merger and the contractual rights of the Plaintiffs as against the Defendant were preserved. When the Charge was discharged the outstanding indebtedness of the Defendant on a simple contract remained.

Then counsel for the Defendant contended that the Plaintiffs' claim was barred by limitation. The answer of the Plaintiffs was that there was an acknowledgement of the debt by the Defendant in April, 1973.

The evidence was that the Defendant's solicitors, A.K. Lee & Co. of Kuala Lumpur, wrote the following letter on the April 5, 1973, to the Official Assignee, Malaysia (Ex. P9), (the letter):

"Tuan,

Re Lao Kee Yum a bankrupt

We act for Mr. Cheong Hoon Chong who is co-proprietor with the abovenamed bankrupt of a piece of land with a factory erected thereon and held under Q.T. (R) 3955 for Lot 18/68 Mukim of Damansara, District of Kuala Lumpur.

The aforesaid land is charged in favour of Bank of American National Trust and Saving Association and the amount outstanding to-date is $206,029.69. We understand that you are in process of selling the said bankrupt's half share in the said land for redemption of the said charge.

Kindly withhold further action in the proposed sale as our client is able to obtain a better offer for the said land."

A carbon copy of the letter was sent to the Plaintiffs' solicitors in Kuala Lumpur and also to the Defendant.

The Defendant said in evidence regarding the letter "I did not specifically authorise him (the solicitor) to enter appearance for me but I did give him general authority to act on my behalf. I have received a carbon copy of letter. I did not do anything about it."

Counsel for the Defendant submitted that the letter was not an acknowledgement of the debt within section 26(2) of the Limitation Act (Cap. 10). He said that the letter was not addressed to the Plaintiffs but to the Official Assignee; that the Official Assignee was not the agent of the Plaintiffs and that A.K. Lee & Co. did not have the express authority of the Defendant to send a carbon copy of the letter to the Plaintiffs solicitors.

Under Section 27 (2) of the Limitation Act an acknowledgement "may be made by the person by whom it is required to be made under that section (section 26)" and to be effective it has to be "made to the person, or to an agent of the person, whose title or claim is being acknowledged." *In re Compania de Electricidad De La Provincia De Burnos Aires Ltd.*[2] Slade J. said (at page 351):

"In my judgment,..., a written acknowledgment cannot be said to be 'made to' a creditor or his agent, within the meaning of Section 24(2), (which is similar to Section 27 (2) of our Limitation Act) unless either (a) it is delivered to the creditor or his agent by or with the authority of the debtor or his agent or (b) it is expressly or implicitly addressed to and is actually received by the creditor or his agent.

In my judgment, in case (a) it would not matter that the acknowledgement was not, according to its terms, expressly or implicitly addressed to the recipient. In case (b) it would not matter that the acknowledgment reached the hands of the creditor otherwise than by or with the authority of the debtor. In either case, however, it would be necessary that the creditor should actually receive the acknowledgment before he could rely on it."

In the present case it is true that the letter was addressed to the Official Assignee who was not the agent of the Plaintiffs. However, in the letter there was an express acknowledgment of the debt to the Plaintiffs and a carbon copy of it was sent to the Plaintiffs' solicitors by the Defendant's solicitors who had the authority to act on the Defendant's behalf. In our view the letter constituted a good acknowledgment within the Limitation Act.

For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Yeo Kee Chin & Co.*

LIEW AH SOO v. TAN HIAP HUI; NEW TOWN DEVELOPMENT (PTE.) LTD v. TAN HIAP HUI

[O.C.J. (Sinnathuray J.) December 23, 1981]

[Singapore – Originating Summons Nos. 121 & 459 of 1982]

Land Law – Caveat – Removal of – Application for – Caveator failed to show cause for caveat to remain in force.

The facts were as follows. The said premises were sold to Ng Toon Heoh and Goh Geok Eng ("the original purchasers") by an agreement dated August 29, 1980. A caveat No. CV/41628 was duly lodged on September 20, 1980 with the Registrar of Titles by the original purchasers.

By a Deed of Assignment dated November 27, 1980 the original purchasers assigned the premises to Liew. On January 7, 1981 Liew lodged a caveat No. CV/45461 with the Registrar of Titles. Liew claimed interest as purchaser of the premises under and by virtue of the Deed of Assignment. On January 17, 1981 Liew entered into a fresh Agreement for Sale and Purchase with the Developers upon the same terms and conditions as the original purchasers.

In Originating Summons No. 121 of 1982, the plaintiff, Liew Ah Soo ("Liew") claimed against the defendant, Tan Hiap Hui ("Tan") for an order that the caveat No. CV/4476 dated December 16, 1980 lodged by Tan against the said premises be removed. In Originating Summons No. 459, New Town Development (Pte.) Ltd. ("the Developers"), the registered proprietors of the premises, as the applicants caveatees called upon Tan, the caveator, to show cause why the caveat should not be removed forthwith.

Tan claimed interest as purchaser of the premises by virtue of an option given to him by one Roland Koh and duly exercised by him on December 11, 1980.

Held: (1) so far as the Developers were concerned, there was no purchaser by the name of Roland Koh or Tan Hiap Hui registered with them. They were not privy to the transaction between Tan and Roland Koh. They had, instead, an Agreement for sale and purchase with Liew. Tan had therefor not shown cause for the caveat to remain in force against the Developers;

(2) Liew was entitled to have the caveat of Tan lodged against the premises removed because Liew was, by the Deed of Assignment, already the owner of the premises when Tan lodged his caveat. Liew, too, was not privy to the transaction between Tan and Roland Koh;

(3) on the argument on *locus standi* raised on behalf of Tan against Liew, as Liew had filed a caveat, he was entitled to commence the present proceedings to have the conflict between his caveat and that of Tan resolved by the court.

CIVIL SUITS.

Tan Ching Tiong for the plaintiff/applicant in O.S. 121/82

Hew Sin Teck for the applicant/caveatee in O.S. 459/82

Richard Tan for the Defendant/Respondent in O.S. 121/82 and O.S. 459/82

Cur. Adv. Vult.

Sinnathuray J.: In Originating Summons No. 121 of 1982, the plaintiff, Liew Ah Soo ("Liew"), claims against the defendant, Tan Hiap Hui ("Tan"), for an order that the caveat No CV/44746 dated December 16, 1980 ("the caveat") lodged by Tan against the land known as Private Lot 50, Camellia Park, Singapore, now known as No 142, Tamarind Road ("the premises") in the Land Titles Registry be removed and for other consequential orders.

The summons was partheard on July 20, 1982. When it came on for further hearing on September 23, 1982, another Originating Summons No. 459 of 1982 was heard together with the partheard case. In the latter Originating Summons, New Town Development (Private) Limited ("the Developers"), the registered proprietors of the premises, as the applicants/caveatees called upon Tan, the respondent/caveator, to show cause why the caveat should not be removed forthwith.

At the end of the hearing, solely on the facts, I made orders in terms in both and Originating Summonses. Those facts are briefly these.

By an agreement dated August 29, 1980, the Developers sold the premises to Ng Toon Heoh and Goh Geok Eng ("the original purchasers"). A caveat No. CV/41628 was duly lodged on September 20, 1980 with the Registrar of Titles by the original purchasers.

By a Deed of Assignment dated November 27, 1980 the original purchasers for the consideration set out therein assigned the premises to Liew. On January 7, 1981 Liew lodged a caveat No CV/45461 with the Registrar of Titles. Liew claimed interest as purchaser of the premises under and by virtue of the Deed of Assignment. On January 17, 1981 Liew entered into a fresh Agreement for Sale and Purchase with the Developers upon the same terms and conditions as the original purchasers.

More recently, by a letter dated April 29, 1982 Liew's solicitors informed the solicitors for the Developers of the caveat lodged by Tan against the premises. By this caveat Tan claimed interest as purchaser of the premises by virtue of an option given to him by one Roland Koh Eng Song ("Roland Koh") and duly exercised by him on December 11, 1980.

The first point about Tan's caveat is that there is no caveatee named in the caveat. The Developers as the registered proprietors are there-

fore the caveatee: see the definition of "caveatee" in section 4 of the Land Titles Act (Cap. 276). They can summon as they have done, Tan, the caveator, to attend court to show cause why the caveat should not be withdrawn or otherwise removed: see section 107 of the said Act.

So far as the Developers are concerned, the conclusive point is that there is no purchaser by the name of Roland Koh or Tan Hiap Hui registered with them. They are not privy to the transaction between Tan and Roland Koh. They have, however, an Agreement for Sale and Purchase with Liew. In these circumstances, I found that Tan had not shown cause for the caveat to remain in force against the Developers.

I also held that Liew was entitled to have the caveat of Tan lodged against the premises removed because Liew was, by the Deed of Assignment, already the owner of the premises when Tan lodged his caveat. As in the case of the Developers, Liew too was not privy to the transaction between Tan and Roland Koh.

Finally, on the argument on *locus standi* raised on behalf of Tan against Liew, the short answer is, as Liew had filed a caveat (No. CV/45461), he was entitled to commence the proceedings in Originating Summons No. 121 of 1982 to have the conflict between his caveat and that of Tan resolved by this court.

For these reasons, as I have said, I made orders in terms in both the Originating Summonses.

Order accordingly.

Solicitors: *Wee Swee Teow & Co.; Tang & Tan; Lee & Lee.*

MALAYSIAN REPORTS

DR. PARAMSOTHY S/O MURUGASU v. UNIVERSITY OF MALAYA

[F.C. (Raja Azlan Shah L.P., Abdul Razak & Abdoolcader JJ.) November 5 & December 21, 1982]

[Kuala Lumpur – Federal Court Civil Appeal No. 165 of 1982]

Contract – Contract of employment – Appointment with University of Malaya – Appointment "subject to such terms and conditions as may be prescribed" – Prescribed examinations – Service Circular requiring officers on probation to pass Peperiksaan Am Kerajaan – Whether valid – Constitution of University of Malaya, ss. 4, 16, 25, 45.

University of Malaya – Contract of Employment – Appointment of lecturer – Appointment "subject to such terms and conditions as may be prescribed" – Prescribed examinations – Service Circular requiring officers on probation to pass Peperiksaan Am Kerajaan – Whether valid – Constitution of University of Malaya, ss. 4, 16, 25 and 45.

Employment – Contract of employment – "Subject to such terms and conditions as may be prescribed" – Service Circular requiring officers on probation to pass Peperiksaan Am Kerajaan – Validity of.

In this case the appellant was appointed a lecturer in the Faculty of Medicine, University of Malaya and the letter of offer expressly sets out a number of conditions including the following:

"(ii) subject to satisfactory service, passing the prescribed examinations and fulfilling other relevant conditions you shall be eligible to be considered for confirmation in your appointment at the end of this period.

(ix) You shall at all times, be subjected to the Constitution of the University of Malaya, Statutes, Acts and Regulations in force in the University of Malaya. Amendments and Adaptations to these regulations and practices may, from time to time, be made by the Council of the University of Malaya."

The University Council in a policy decision passed a resolution requiring all officers in Groups A and B who are still on probation to pass the Peperiksaan Am Kerajaan in addition to any other examination as a prerequisite for confirmation in the posts. The resolution was embodied in a Service Circular.

The appellant filed a writ seeking a declaration and an injunction to restrain the University from implementing the Service Circular on the ground that it is invalid and conflicts with the terms and conditions of his contract of employment and is also in violation of section 45(3)(b) of the Constitution of the University. The learned judge of the High Court held that the Service Circular was valid and not *ultra vires* the Constitution of the University. The appellant appealed.